IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP NO. 456 OF 2002

Date of Decision: 23rd March, 2007.

Mohan Lal Chandel	Petitioner
Versus	
State of Himachal Pradesh	Respondents.

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the petitioner: Mr.S.D.Gill, Advocate.

For the respondent No.1: Mr.C.B.Singh, Dy. Advocate General.

For respondents No.1 & 2: Mr.Ramakant Sharma, Advocate,

Sanjay Karol, J.(Oral)

This judgment is being dictated in the open Court in the presence of the learned counsel for the parties.

By means of present writ petition, the petitioner is seeking quashing of order dated 2.3.2002, Annexure P-5, passed by Secretary (Coop.) to the Government of Himachal Pradesh, who had set aside the order dated 9.2.1998 passed by the Arbitrator (Dy. Registrar, Cooperative Societies), in favour of the petitioner. The petitioner is also

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

seeking back wages alongwith 9% interest w.e.f. 1.10.1988 to 9.11.1989.

Undisputed facts are that while working as Junior Clerk with the respondent-Bank, petitioner was convicted vide judgment dated 8.8.1988 under Sections 326, 325, 323 read with Section 34, IPC. This necessitated termination of the petitioner from the services of the respondent-Bank in terms of Rule 58(a) of the Jogindra Central Co-operative Bank Employees (Terms of Employment and Working Conditions) Rules, 1983 (hereinafter referred to Rules). The termination was with effect from 12.10.1988. The order of conviction was set aside by the Appellate Court vide its judgment dated 30.9.1989. The acquittal of the petitioner has attained finality. As a consequence thereof in terms of Rule 58(b), petitioner's services were reinstated without any back wages. Rules 58(a) and 58(b), are reproduced as under:-

> "58(a) If an employee is arrested on any criminal charge an officer competent to award punishment may order for his suspension from the date of arrest and for payment of suspension allowance to him according to these rules, during the period of suspension. After the conclusion of the trial his basic pay and allowances may be determined in accordance with the nature of the case against him and it may also be

> determined whether to treat him on duty or leave during the period of suspension. If the employee be found not guilty of all the charges levelled against him, the bank may consider whether to pay him for the suspension period full basic pay and allowances admissible to him and to treat him as on duty during that period.
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> If an employee is convicted and sentenced for any offence by a jail sentence his services shall be deemed to have been terminated and in such a case it will not be necessary to give him a charge sheet for the absence from duty.
>
> (b) When the sentence awarded by a lower court is set aside by a superior court and the employee is honourably acquitted he may be reinstated in the service of the bank without any back wages."

The short point for consideration in this writ petition is as to whether the petitioner is entitled for back wages for the period 1.10.1988 to 9.11.1989, while the petitioner was under termination due to his conviction in a criminal case. Petitioner's claim was allowed vide order dated 9.2.1998 by the Arbitrator (Deputy Registrar, Cooperative Societies, Shimla), wherein the respondents were directed to pay full salary for the entire period of termination i.e. 1.10.1988 to 9.11.1989 with 9% interest from the date of institution of the claim till the realization of the

entire amount. This order was assailed by the respondent by way of an appeal under Section 93 of the H.P. Cooperative Societies Act and vide order dated 2.3.2002, the order dated 9.2.1998 was set aside.

While considering Rule 49 of the M.P. Cooperative Societies Act, 1960 and Rules framed thereunder, which are para materia with Rule 58 in issue, the Apex Court in **Hukmi Chand vs. Jhabua Cooperative Central Bank Ltd., Jhabua (MP) and another**, reported in (1998)2 SCC 291, has held that right to reinstatement on acquittal does not in itself by necessary implication amount to a right to back wages. The power to decide for awarding back wages is not arbitrary, particularly, if the termination of services is on conviction. The grant of back wages would depend on the facts and circumstances of each case, particularly, when the employee does not work with the employer on account of valid termination.

In my view, no case for interference has been made out by the petitioner. The Appellate Authority has given cogent and reasoned order while arriving at its decision. Obliviously, the petitioner has not worked and the respondents in their wisdom have decided not to award any back wages at the time of reinstatement.

No other point was urged by the learned counsel for the parties.

I see no reason to interfere with the order passed by the Appellate Authority. In the facts and circumstances of the case, the writ petition is dismissed. However, there shall be no order as to costs.

23rd March, 2007 **(Sanjay Karol),**
(C) **Judge**